

FLIESLER MEYER LLP

INTELLECTUAL PROPERTY LAW

850 CALIFORNIA STREET • FOURTEENTH FLOOR
SAN FRANCISCO • CALIFORNIA 94108
TELEPHONE 415.382.3800
FACSIMILE 415.382.2928
INTERNET WWW.FDML.COM

MARTIN C. FLIESLER
SHELDON R. MEYER
THOMAS A. WARD
JEFFREY R. KURIN
JOSEPH P. O'MALLEY
KARL F. KENNA

MICHAEL ROBBINS
JUSTAS GERINGSOHN
K. IAIN MCAUSLAND*
NATHAN L. FELD
KUIRAN (TED) LIU
ADAM T. HIPP

*MASSACHUSETTS; NEW YORK

SOLICITOR
FEB - 7 2011
U.S. PATENT & TRADEMARK OFFICE
February 4, 2011

MARTIN C. FLIESLER
mcf@fdml.com

VIA HAND-DELIVERY

Office of the General Counsel
United States Patent and Trademark Office
600 Dulany Street
Madison Building East, Room 10B20
Alexandria, VA 22314

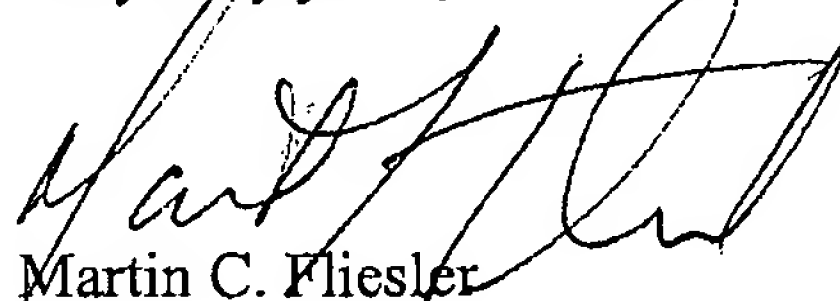
Attention: Office of the Solicitor

Re: *Hollmer v. Harari*
Notice of Appeal from Decision of the Board of Patent Appeals and Interferences
Our File No.: SPAN-01002US0

Dear Counsel:

Please find enclosed an original and copy of a Notice of Appeal, along with a copy of the Decision – Interlocutory Motions – Bd. R. 125(b) and Re-Declaration – Bd. R. 203(c), dated December 6, 2010, and Judgment – Bd. R. 127, dated December 14, 2010, of the Board of Patent Appeals and Interferences.

Very truly yours,



Martin C. Fliesler

MCF/etf
Enclosures

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

SHANE C. HOLLMER
and LEE E. CLEVELAND,

Appellants,

NOTICE OF APPEAL

v.

ELIYAHOU HARARI
and SANJAY MEHROTRA,

Appellees.

Shane C. Hollmer and Lee E. Cleveland hereby appeal the court for review of the *Decision – Interlocutory Motions – Bd. R. 125(b); Re-Declaration – Bd. R. 203(c); Judgment – Bd. R. 127*, and Orders therein, of the Board of Patent Appeals and Interferences of the United States Patent and Trademark Office. The *Decision – Interlocutory Motions* and *Re-Declaration* were entered and received on December 6, 2010. The *Judgment* was entered and received on December 14, 2010.

Dated: February 3, 2011



Martin C. Flesler

Joseph P. O'Malley

FLIESLER MEYER LLP

650 California Street, 14th Floor

San Francisco, CA 94018

Tel: (415) 362-3800

Fax: (415) 362-2928

Attorneys for Appellants,

Shane C. Hollmer and Lee E. Cleveland

BoxInterferences@uspto.gov
571-272-4683

Paper 67
Filed: 6 December 2010

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

ELIYAHOU HARARI and SANJAY MEHROTRA
Junior Party
(Application 09/310,880)¹

v.

SHANE C. HOLLMER and LEE E. CLEVELAND
Senior Party
(Patent 5,828,601)²

Patent Interference No. 105,606 (JL)
(Technology Center 2800)

Before: RICHARD E. SCHAFER, JAMESON LEE, and RICHARD TORCZON,
Administrative Patent Judges.

LEE, *Administrative Patent Judge.*

DECISION -- INTERLOCUTORY MOTIONS -- Bd. R. 125(b)

1 Filed May 14, 1999. The real party in interest is SanDisk Corporation.

2 Based on Application 08/160,582, filed December 1, 1993. The real party in interest is Spansion LLC.

1 This case is remanded from the Court of Appeals for the Federal Circuit.
2 *Harari v. Hollmer*, 602 F.23d 1348 (Fed. Cir. 2010). We had granted Hollmer's
3 Motion 1 alleging unpatentability of all of Harari's involved claims 76-80 for lack
4 of written description under 35 U.S.C. § 112, first paragraph. The Federal Circuit
5 reversed, holding that Harari's involved application did sufficiently identify
6 Application 07/337,579 (the '579 application) as containing material for
7 incorporation by reference, and that the material copied from the '579 application
8 and filed in a preliminary amendment together with the involved Harari application
9 did not constitute new matter. The case has been remanded to the Board for further
10 proceeding consistent with the Court's opinion. (Decision, Paper 66, pp. 8-9).

11 What remains before us now is Harari's Motion 1, previously dismissed as
12 moot, which seeks to have Harari accorded the benefit of Applications 08/771,708,
13 08/174,768, 07/963,838, and 07/337,566 with respect to Count 1.

14 Findings of Fact

15 1. This interference was declared on January 28, 2008. (Paper 1).

16 2. Harari is involved in this interference on the basis of Application
17 09/310,880, filed May 14, 1999. (Declaration, Paper 1, p. 3).

18 3. Hollmer is involved in this interference on the basis of Patent
19 5,828,601, based on Application 08/160,582, filed on December 1, 1993.
20 (Declaration, Paper 1, p. 3).

21 4. The sole count in this interference is Count 1 and it is defined as
22 Harari's application claims 76-80 or Hollmer's patent claims 1-3 and 14-16.
23 (Declaration, Paper 1, pp. 3-4)

1 5. The only pending claims in Harari's involved application are claims
2 76-80, and all of them have been designated at the time of declaration of this
3 interference as corresponding to the sole count in this interference. (Declaration,
4 Paper 1, p. 4).

5 6. Harari's involved application is a continuation of Application
6 08/771,708, filed December 20, 1996, which is a continuation of Application
7 08/174,768, filed December 29, 1993, which is a continuation of Application
8 07/963,838, filed October 20, 1992, which is a divisional application of
9 Application 07/337,566, filed April 13, 1989. (Exhibit 1003, p. 1:8-12).

10 7. As is stated in the Background of the Invention portion of Harari's
11 involved Application 09/310,880 as filed, Harari's invention is directed to "a
12 system of integrated circuit Flash EEprom chips." (Exhibit 1002, p. 1:5-8).

13 8. "EEprom" is a term of art meaning semiconductor electrically
14 erasable programmable read only memories. (Exhibit 1002, p. 1:5-7).

15 9. The 08/174,768 application was filed on December 29, 1993. A
16 transmittal sheet accompanied the application when filed, which requests the filing
17 of a continuation application of the 07/963,838 application, stating that the
18 enclosed application is a copy of the 07/963,838 application. (Exhibit 2005, p. 1).

19 10. The 07/963,838 application was filed on October 20, 1992. A
20 transmittal sheet accompanied the application when filed, which requests the filing
21 of a divisional application of the 07/337,566 application, stating that the enclosed
22 application is a copy of the 07/337,566 application. (Exhibit 2003, p. 1).

1 In dispute is adequacy of the statement of incorporation by reference
2 contained in each application for which the benefit is sought. As was indicated in
3 the order authorizing motions (Order, Paper 21), there is no dispute on whether the
4 actual material from Application 07/337,579 (the '579 application), relied on by
5 Harari for support under 35 U.S.C. § 112, first paragraph, has adequate written
6 description for an embodiment within the scope of the count. In that connection, it
7 is not disputed that Harari needs substantive technical material from the section in
8 the '579 application entitled "Read Circuits and Techniques Using Reference
9 Cells."

10 To incorporate material by reference, the host document must identify with
11 detailed particularity what specific material it incorporates and clearly indicate
12 where that material is found in the various documents. *Zenon Environmental, Inc.*
13 *v. U.S. Filter Corp.*, 506 F.3d 1370, 1378 (Fed. Cir. 2007); *Cook Biotech Inc. v.*
14 *Acell, Inc.*, 460 F.3d 1365, 1376 (Fed. Cir. 2006); *Advanced Display Sys., Inc. v.*
15 *Kent State Univ.*, 212 F.3d 1272, 1282 (Fed. Cir. 2000).

16 In the context of Harari's motion, the specific issues are two:

17 1. Whether the incorporation by reference language used in
18 the specification of each incorporating application is sufficiently
19 specific as to the technical content Harari needs from the '579
20 application, assuming that the '579 application is the intended source?
21

22 2. Whether the identity of the '579 application is
23 sufficiently identified in the statement of incorporation by reference in
24 each incorporating application as an intended source of the material
25 for incorporation?
26
27

1. 1

2 Issue 1 involves each of the four applications the benefit of which is sought
3 by Harari -- 08/771,708, 08/174,768, 07/963,838, and 07/337,566. The language
4 in focus in each of the four applications is substantively the same, and specifically
5 refers to optimized erase and optimized write operations. We reproduce pertinent
6 language from Harari's Application 07/337,566 (the '566 application), which is
7 representative:

8 '566 application (Exhibit 2001, pages 11-12)

9 Optimized erase implementations have been disclosed in two
10 copending U.S. patent applications. They are copending U.S. patent
11 applications, Serial No. 204,175, filed June 8, 1988, by Dr. Eliyahou
12 Harari and one entitled "Multi-State EEprom Read and Write Circuits
13 and Techniques," filed on the same day as the present application, by
14 Sanjay Mehrotra and Dr. Eliyahou Harari. The disclosures of the two
15 applications are hereby incorporate[d] by reference. The Flash
16 EEprom cells are erased by applying a pulse of erasing voltage
17 followed by a read to verify if the cells are erased to the "erased"
18 state. If not, further pulsing and verifying are repeated until the cells
19 are verified to be erased. By erasing in this controlled manner, the
20 cells are not subject to over-erasure which tends to age the EEprom
21 device prematurely as well as make the cells harder to program.

22
23 '566 application (Exhibit 2001, page 22)

24
25 Optimized implementations of write operation for [the] Flash EEprom
26 device have been disclosed in two previously cited co-pending U.S.
27 patent applications, Serial No. 204,175, and one entitled "Multi-State
28 EEprom Read and Write Circuits and Techniques." Relevant portions
29 of the disclosures are hereby incorporated by reference. Briefly,
30 during the write cycle, the controller applies a pulse of programming
31 (or writing) voltages. This is followed by a verified read to determine

1 if all the bits have been programmed properly. If the bits did not
2 verify, the controller repeats the program/verify cycle until all bits are
3 correctly programmed.
4

5 The above-quoted text clearly indicates that reading the memory is a part of
6 both the operation to erase memory cells and the operation to write into or program
7 the memory cells, and that reading the memory cells is key to the optimized erase
8 and optimized write implementations referred to in the statement of incorporation
9 by reference.

10 The disclosure of the '579 application, alleged source of the material for
11 incorporation, is also not organized or divided into neatly separated sections on
12 reading, writing, and erasing of memory cells. It includes the following labeled
13 sections (Exhibit 2011):

14 Background of the Invention

15 Summary of the Invention

16 Brief Description of the Drawings

17 Description of the Preferred Embodiments

18 "Split-Channel" EEprom Cell

19 Addressable Flash EEprom Array

20 Flash EEprom System

21 Read Circuits and Techniques Using Reference Cells

22 On Chip Program Verify

23 Variable Control of Voltage to the Control Gate

1 Claims

2 Abstract

3 Drawings

4 Patent Application Declaration

5 Hollmer asserts that a person of ordinary skill in the art would readily
6 distinguish a memory's read operations which obtain or interpret data from the
7 memory cell from a memory's erase operation, and from a memory's write
8 operation which records information into a memory cell. (Hollmer Opp. 1,
9 Paper 42, p. 15:10-16). Hollmer asserts that each application for which benefit is
10 sought distinguishes a read from a write and an erase. (Hollmer Opp. 1, Paper 42,
11 pp. 15:17 to 17:14). Hollmer also points to the source '579 application and states
12 that it too distinguishes a read from a write and an erase. (Hollmer Opp. 1,
13 Paper 42, pp. 17:15 to 18:8).

14 Hollmer's assertions are misplaced. The question is not whether a read is
15 different from a write, or whether a read is different from an erase. Of course it is,
16 in both cases. Reading is not the same as writing or erasing. But to end the
17 discussion there as Hollmer has in its opposition is overly simplistic. Hollmer does
18 not acknowledge, much less address, the fact that the reading of memory cells has
19 been specifically described in each of the Harari applications - the benefit of which
20 is sought as a key part of the optimized erase implementation and the optimized
21 write implementation which have been incorporated by reference. Based on the
22 above-quoted description of the optimized erase and optimized write
23 implementations, which have been identified for incorporation, one cannot perform

1 the optimized erase or the optimized write operation without some form of
2 repeatedly reading the memory cells being erased or written.

3 We have carefully considered Harari's motion and are persuaded that the
4 incorporating by reference language in each application, the benefit of which is
5 sought, reasonably conveys that the disclosure in the '579 application relating to
6 read operations which are needed for implementing an optimized erase operation
7 and an optimized write operation is also incorporated into the incorporating
8 application. Hollmer's failure to address the full description of the material being
9 incorporated by reference, in particular the reliance of the optimized erase and
10 write operations on the memory read operation, undermines the persuasiveness of
11 its opposition.

12 We have carefully considered the declaration of Vivek Subramanian
13 (Exhibit 1015), which was submitted in support of Hollmer's opposition.
14 Mr. Subramanian specifically acknowledges in ¶ 29 and ¶ 31 of his declaration
15 (Exhibit 1015) that the source '579 application makes clear that similar circuits
16 could be used for both read and program/erase verify operations, citing page 28,
17 lines 28-31 of the source '579 application, which states:

18 The read circuits and operation described are also employed in the
19 programming and erasing of the memory cells, particularly in the
20 verifying part of the operation.
21

22 The above-quoted text appears in the section of the source '579 application which
23 is labeled "Read Circuits and Techniques Using Reference Cells." While it is true
24 that the command line does actual reading to provide data as an output of the
25 memory chip, and the output lines to provide the data as an output of the memory

1 chip are not necessary for erase verify and write verify operations, the count does
2 not include those features and thus whether the read command line and the data
3 output lines have been incorporated by reference is irrelevant.

4 Also, for reasons already discussed above, Mr. Subramanian's opinion that a
5 read is different from a write and from an erase misses the mark. A read is
6 different from a write and a read is different from an erase. But a read is involved
7 in an optimized erase operation and also in an optimized write operation. That fact
8 is not sufficiently addressed and accounted for by Mr. Subramanian's testimony.

9 We credit the testimony of Harari's technical witness, John A. Reed, over
10 the testimony of Hollmer's witness, Vivek Subramanian. Mr. Reed persuasively
11 points out that the reference in the incorporation by reference language to repeated
12 reading of the memory cells would lead one with ordinary skill to the section in the
13 source '579 application titled "Read Circuits and Techniques Using Reference
14 Cells." (Exhibit 2021, ¶ 22:5-7). Mr. Reed further notes that the first two
15 sentences of that section reads as follows (Exhibit 2021, ¶ 22:7-10):

16 To accurately and reliably determine the memory state of a cell is
17 essential for EEPROM operation. This is because all of the basic
18 functions such as read, erase verify and program verify depend on it.
19

20 Mr. Reed still further identifies the last three paragraphs of the section "Read
21 Circuits and Techniques Using Reference Cells" as discussing utilizing the read
22 circuits to verify whether the desired erased state has been achieved. (Exhibit
23 2021, ¶ 22:12-16). Note in particular that the third to the last paragraph in the
24 section begins with the sentence (Exhibit 2011, p. 28:28-31): "The read circuits
25 and operation described are also employed in the programming and erasing of the

1 memory cells, particularly in the verifying part of the operation.” The testimony
2 amply supports Harari’s position that the section entitled “Read Circuits and
3 Techniques Using Reference Cells” is within the referenced material for
4 incorporation.

5 For the foregoing reasons, the incorporation by reference language used in
6 the specification of each of Applications 08/771,708, 08/174,768, 07/963,838, and
7 07/337,566 is sufficiently specific as to the technical content Harari needs from the
8 ‘579 application, assuming that the ‘579 application is the intended source.

10 2.

11 Issue 2 is involved only with respect to two of the four prior applications,
12 specifically Applications 08/174,768, and 07/963,838.

13 Application 08/771,708, issued as Patent 5,991,517, clearly and specifically
14 identifies the ‘579 application as the source of materials being incorporated by
15 reference. (Exhibit 2009, Patent 5,991,517, 8:33-37; 13:34-38). Application
16 07/337,566 identifies the source application for incorporation as one “entitled
17 ‘Multi-State EEprom Read and Write Circuits and Techniques,’ filed on the same
18 day as the present application, by Sanjay Mehrotra and Dr. Eliyahou Harari.”
19 (Exhibit 2001, ‘566 App. p. 11:27-31). The ‘579 application was in fact filed on
20 the same day as Application 07/337,566, and indeed had the same title and named
21 the same inventors as those identified by the incorporating language in Application
22 07/337,566. (Exhibit 2011, ‘579 App. p. 1). Thus, misidentification of the source
23 application is not an issue for Applications 08/771,708 and 07/337,566.

1 With respect to Applications 08/174,768, and 07/963,838, the issue stems
2 from the fact that the incorporating by reference language in those applications
3 refers to an application “filed on the same date as the present application” and the
4 fact that the ‘579 application was not filed on the same day as either Application
5 08/174,768 or Application 07/963,838. The issue is essentially the same as that
6 already determined by the Federal Circuit in its reversal of our granting of
7 Hollmer’s Motion 1. There, we held that because the incorporating by reference
8 language in Harari’s involved application refers to an application “filed on the
9 same day as the present application” and because the ‘579 application was not filed
10 on the same day as Harari’s involved application, the ‘579 application was
11 improperly and inadequately identified for incorporation.

12 The Federal Circuit ruled, however, that in the case of an application which
13 has not yet issued, the incorporating language “filed on the same day as the present
14 application” must be interpreted from the perspective of a reasonable Examiner
15 who has access to all the transmittal sheets, preliminary amendments, and copies of
16 previously filed applications in the chain of continuing applications leading all the
17 way back to the initial parent application, which in this case is Application
18 07/337,566. The Court stated, *Harari v. Hollmer*, 602 F.3d at 1352-53:

19 The proper standard by which to evaluate the sufficiency of
20 incorporation by reference language, at this stage of the proceedings
21 [prior to issuance], is whether the identity of the incorporated
22 reference is clear to a reasonable examiner in light of the documents
23 presented. [Footnote omitted.] In other words, the relevant inquiry is
24 whether a reasonable examiner would be so befuddled by the language
25 of the original disclosure [presented at the time of filing], despite the
26 explanation provided in the transmittal and preliminary amendment,

1 that he could not determine what document was intended to be
2 incorporated by reference. See In re Fouche, 439 F.2d 1237, 1239
3 (CCPA 1971); see also 37 C.F.R. § 1.57(g)(2).
4

5 We are not swayed by the Board's allegation that deciphering
6 the identity of the incorporated reference would require a massive
7 investigation and extensive detective work into external documents.
8 At this stage of the examination, the examiner's determination is not
9 confined to the photocopy of the initial parent disclosure on its face,
10 nor does it require investigation beyond the documents filed. The
11 examiner is presented with a transmittal sheet identifying the nature of
12 the documents submitted and a preliminary amendment with [a]
13 "remarks" section explaining what documents are before the examiner
14 and how they relate to each other.
15

16 There is no situation in which the context-specific "present
17 application" language would be read out of context and result in the
18 alleged confusion.
19

20 Under a reasonable Examiner standard, one would have had access to the
21 initial filing papers of Application 08/174,768, including transmittal sheets, and
22 recognized that the applicant requested the filing of a continuation application of
23 Application 07/963,838, and that the application as filed is merely a "copy" of
24 Application 07/963,838. Similarly, under a reasonable Examiner standard, one
25 would have had access to the initial filing papers of Application 07/963,838,
26 including transmittal sheets, and recognized that the applicant requested the filing
27 of a divisional application of Application 07/337,566, and that the application as
28 filed is merely a "copy" of Application 07/337,566. Since there was no patent
29 application filed by Sanjay Mehrotra and Dr. Eliyahou Harari on the date of filing
30 of Applications 07/963,838 and 08/174,768, under the reasonable Examiner

1 standard one would have recognized that the language “filed on the same date as
2 the present application” refers to the ‘579 application which was filed on the same
3 date as Application 07/337,566. Accordingly, there was not an inadequate
4 identification of the ‘579 application as containing material for incorporation by
5 reference, for either Application 07/963,838, or Application 08/174,768.

6 We recognize that Application 07/963,838 issued on March 22, 1994, as
7 Patent 5,297,148, and Application 08/174,768 issued on February 11, 1997, as
8 Patent 5,602,987. Because both of those earlier filed applications already issued as
9 patents, it seems perhaps the reasonable Examiner standard, as articulated by the
10 Federal Circuit, for applications not yet issued would not apply. However, it still
11 does. Harari’s Motion 1 is not about the patentability of any claim in either
12 Application 07/963,838 or Application 08/174,768. Rather, it is about priority
13 under 35 U.S.C. § 102(g) of Harari’s involved application claims. The determining
14 attribute is the status of Harari’s involved Application 09/310,880, which has not
15 yet issued as a patent. It is Harari’s involved application which provides the
16 context for determining, in this case, what has been incorporated by reference into
17 Applications 07/963,838 and 08/174,768.

18 For the foregoing reasons, the identity of the ‘579 application is sufficiently
19 identified in the statement of incorporation by reference in each of Applications
20 08/771,708, 08/174,768, 07/963,838, and 07/337,566, as an intended source of
21 material for incorporation.

Interference 105,606
Harari v. Hollmer

1 Conclusion

2 Harari has shown by a preponderance of the evidence that it is entitled to be
3 accorded the benefit, with respect to Count 1, of the filing dates of Applications
4 08/771,708, 08/174,768, 07/963,838, and 07/337,566.

5 Order

6 Harari's Motion 1 is herein granted.

7

Interference 105,606
Harari v. Hollmer

By Electronic Transmission:

Attorney for Junior Party Hollmer:

Martin C. Fliesler, Esq.
Rex Hwang, Esq.
FLIESLER MEYER LLP
650 California Street, 14th Floor
San Francisco, CA 94108
(415) 362-3800
mcf@fdml.com
rhwang@fdml.com

Attorney for Senior Party Harari:

Gerald P. Parsons, Esq.
Davis Wright Tremaine LLP
505 Montgomery Street, Suite 800
San Francisco, CA 94111-6533
(415) 276-6534
geraldparsons@dwt.com

William A. Birdwell, Esq.
Davis Wright Tremaine LLP
1300 SW Fifth Avenue, Suite 2300
Portland, Oregon 97201-5630
(503) 778-5208
billbirdwell@dwt.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

SHANE C. **HOLLMER** and LEE E. CLEVELAND
Junior Party
(Patent 5,828,601)¹

v.

ELIYAHOU **HARARI** and SANJAY MEHROTRA
Senior Party
(Application 09/310,880)²

Patent Interference No. 105,606 (JL)
(Technology Center 2800)

Before: LEE, *Administrative Patent Judge*.

RE-DECLARATION - Bd.R. 203(c)

Harari's Motion 1 seeking benefit of the filing dates of Applications 08/771,708, 08/174,768, 07/963,838, and 07/337,566 is granted in a concurrent paper. This interference is herein re-declared to make Harari the senior party.

¹ Based on Application 08/160,582, filed December 1, 1993. The real party in interest is Spansion LLC.

² Filed May 14, 1999. The real party in interest is SanDisk Corporation.

Interference 105,606
Hollmer v. Harari

Identification and order of the parties

Junior Party

Named inventors: SHANE C. HOLLMER, Santa Clara, CA
LEE E. CLEVELAND, Santa Clara, CA

Involved Patent: 5,828,601 granted 27 October 1998 based on
Application 08/160,582, filed 1 December 1993

Title: Programmed reference

Real Party In Interest: Spansion LLC

Senior Party

Named Inventors: ELIYAHOU HARARI, Los Gatos, CA
SANJAY MEHROTRA, Milpitas, CA

Involved Application: 09/310,880 filed 14 May 1999

Title: Flash EEprom system

Assignee: SanDisk Corporation

Interference 105,606

Hollmer v. Harari

Count and claims of the parties

Count 1

Harari's Application claim 76 or Hollmer's patent claim 1

The claims of the parties are:

Hollmer: Claims 1-16
Harari: Claims 76-80

The claims of the parties which correspond to Count 1 are:

Hollmer: Claims 1-3 and 14-16
Harari: Claims 76-80

The claims of the parties which do not correspond to Count 1, and therefore are not involved in the interference, are:

Hollmer: Claims 4-13
Harari: None

The parties are accorded the following benefit for Count 1:

Hollmer: None

Harari: Application 08/771,708, filed 12/20/1996, now Patent 5,991,517.
Application 08/174,768, filed 12/29/1993, now Patent 5,602,987.
Application 07/963,838, filed 10/20/1992, now Patent 5,297,148.
Application 07/337,566, filed 04/13/1989.

Interference 105,606
Hollmer v. Harari

Heading to be used on papers

The following heading must be used on all papers filed in this interference,
see SO ¶ 106.1.1:

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

SHANE C. **HOLLMER** and LEE E. CLEVELAND
Senior Party
(Patent 5,828,601)

v.

ELIYAHOU **HARARI** and SANJAY MEHROTRA
Junior Party,
(Application 09/310,880)

Patent Interference No. 105,606 (JL)
(Technology Center 2800)

Interference 105,606

Hollmer v. Harari

By Electronic Transmission:

Attorney for Junior Party Hollmer:

Martin C. Fliesler, Esq.

Rex Hwang, Esq.

FLIESLER MEYER LLP

650 California Street, 14th Floor

San Francisco, CA 94108

(415) 362-3800

mcf@fdml.com

rhwang@fdml.com

Attorney for Senior Party Harari:

Gerald P. Parsons, Esq.

Davis Wright Tremaine LLP

505 Montgomery Street, Suite 800

San Francisco, CA 94111-6533

(415) 276-6534

geraldparsons@dwt.com

William A. Birdwell, Esq.

Davis Wright Tremaine LLP

1300 SW Fifth Avenue, Suite 2300

Portland, Oregon 97201-5630

(503) 778-5208

billbirdwell@dwt.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

SHANE C. HOLLMER and LEE E. CLEVELAND
Junior Party
(Patent 5,828,601)¹

v.

ELIYAHOU HARARI and SANJAY MEHROTRA
Senior Party
(Application 09/310,880)²

Patent Interference No. 105,606
(Technology Center 2800)

Before: RICHARD E. SCHAFER, JAMESON LEE, and RICHARD TORCZON,
Administrative Patent Judges.

LEE, *Administrative Patent Judge.*

Judgment – Bd. R. 127

1 Based on Application 08/160,582, filed December 1, 1993. The real party in interest is Spansion LLC.

2 Filed May 14, 1999. The real party in interest is SanDisk Corporation. Accorded the benefit of Application 08/771,708, filed December 20, 1996, now issued as Patent 5,991,517; Application 08/174,768, filed December 29, 1993, now issued as Patent 5,602,987; Application 07/963,838, filed October 20, 1992, now issued as Patent 5,297,148; and Application 07/337,566, filed April 13, 1989.

Interference No. 105,606
Hollmer v. Harari

Harari has been accorded benefit of Application 07/337,566, filed April 13, 1989, with respect to Count 1. (Paper 67). In Hollmer's priority statement, Holler states that its earliest corroborated date of conception was April 23, 1993. (Paper 35). Because Hollmer does not assert a date of invention prior to the benefit date accorded Harari, it is now time appropriate for entry of judgment against Hollmer.

It is

ORDERED that judgment on priority as to Count 1 is entered against junior party SHANE C. HOLLMER and LEE E. CLEVELAND;

FURTHER ORDERED that junior party's claims 1-3 and 14-16 of Patent 5,828,601, which correspond to Count 1, are CANCELLED;

FURTHER ORDERED that the parties shall note the requirements of 35 U.S.C. §135(c) and Bd.R. 205; and

FURTHER ORDERED that a copy of this judgment shall be entered into the file of Application 09/310,880, and Patent 5,828,601.

Interference No. 105,606
Hollmer v. Harari

By Electronic Transmission

Attorney for Junior Party Hollmer:

Martin C. Fliesler, Esq.
Rex Hwang, Esq.
FLIESLER MEYER LLP
650 California Street, 14th Floor
San Francisco, CA 94108
Tel: (415) 362-3800
Email: mcf@fdml.com
Email: rhwang@fdml.com

Attorney for Senior Party Harari:

Gerald P. Parsons, Esq.
Davis Wright Tremaine LLP
505 Montgomery Street, Suite 800
San Francisco, CA 94111-6533
Tel: (415) 276-6534
Email: geraldparsons@dwt.com

William A. Birdwell, Esq.
Davis Wright Tremaine LLP
1300 SW Fifth Avenue, Suite 2300
Portland, Oregon 97201-5630
Tel: (503) 778-5208
Email: billbirdwell@dwt.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 4th day of February, 2011, the foregoing Notice of Appeal, along with a copy of the Decision – Interlocutory Motions – Bd. R. 125(b), and Re-Declaration – Bd. R. 203(c), dated December 6, 2010; and Judgment – Bd. R. 127, dated December 14, 2010, were served by email and overnight courier addressed to the following:

William Birdwell, Esq.
Davis Wright Tremain LLP
1300 SW Fifth Avenue, Suite 2300
Portland, OR 97201
billbirdwell@dwt.com

Gerald P. Parsons, Esq.
Davis Wright Tremain LLP
505 Montgomery Street, Suite 800
San Francisco, CA 94111-6533
geraldparsons@dwt.com

/Martin C. Fliesler/
Martin C. Fliesler
FLIESLER MEYER LLP
650 California Street, 14th Floor
San Francisco, CA 94018
Tel: (415) 362-3800
Fax: (415) 362-2928

Attorneys for Appellants,
Shane C. Hollmer and Lee E. Cleveland